

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 694\***

Short Title: Clarify MV Dealer Franchise Laws.

(Public)

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Sponsors: Representatives Owens, Fox, Sherrill, Sutton (Primary Sponsors); Adams, Alexander, Allen, Allred, Arnold, Baddour, Barbee, Barefoot, Barnhart, Bell, Blust, Bonner, Bowie, Boyd-McIntyre, Brubaker, Buchanan, Cansler, Capps, Carpenter, Church, Coates, Cox, Crawford, Creech, Culpepper, Cunningham, Daughtry, Davis, Dedmon, Dockham, Easterling, Eddins, Edwards, Fitch, Gibson, Gillespie, Goodwin, Grady, Gray, Gulley, Hackney, Haire, Hall, Harrington, Hensley, Hiatt, Hill, Hilton, Holliman, Holmes, Howard, Hurley, Insko, Jarrell, Jeffus, Johnson, Justus, Kiser, Lucas, Luebke, McAllister, McComas, McCombs, McLawhorn, Michaux, Miner, Mitchell, Morris, Nye, Oldham, Pope, Preston, Rayfield, Redwine, Rogers, Russell, Saunders, Setzer, Sexton, Smith, Starnes, Teague, Thompson, Tolson, Tucker, Underhill, Wainwright, Walend, Walker, Warner, Warren, Warwick, Weatherly, Weiss, West, C. Wilson, G. Wilson, Womble, Wright, and Yongue.

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Referred to: Rules, Calendar, and Operations of the House.

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March 20, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-287 reads as rewritten:

**"§ 20-287. Licenses required.**

It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. It shall further be unlawful for any person, corporation, or other entity to sell, offer to sell, or, for any fee, commission, or other financial consideration, arrange for the sale of any new motor vehicle within this State unless such person, corporation, or other entity holds a current and valid franchise issued by a manufacturer, factory branch, factory representative, distributor, or distributor branch for the sale of such vehicle. If any

1 motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain  
2 a motor vehicle sales representative's license in addition to a motor vehicle dealer's  
3 license. A sales representative may have only one license. The license shall show the  
4 name of each dealer or wholesaler employing the sales representative. ~~The Subject to~~  
5 the provisions of G.S. 20-305.2, the following license holders may operate as a motor  
6 vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional  
7 fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of  
8 these license holders who operates as a motor vehicle dealer may sell motor vehicles at  
9 retail only at an established salesroom."

10 **SECTION 2.** Chapter 20 of the General Statutes is amended by adding a  
11 new section to read:

12 **"§ 20-301.1. Notice of additional charges against dealer's account; informal**  
13 **appeals procedure.**

14 (a) Notwithstanding the terms of any contract, franchise, novation, or agreement,  
15 it shall be unlawful for any manufacturer, factory branch, distributor, or distributor  
16 branch to charge or assess one of its franchised dealers located in this State, or to charge  
17 or debit the account of such a dealer for goods, materials, or services, other than the  
18 published cost of new motor vehicles, unless the dealer receives a detailed itemized  
19 description of the nature and amount of each such charge in writing at least 10 days  
20 prior to the date such charge or account debit is to become effective or due. For  
21 purposes of this subsection, the charges or debits for which prior written notice is  
22 required include, but are not limited to: advertising or advertising materials; advertising  
23 or showroom displays; customer informational materials; computer or communications  
24 hardware or software; warranty reimbursement; sales incentives; parts; tools; signage;  
25 equipment; dealership operation guides and other materials; manufacturer catalog or  
26 program materials proposed for goods, materials, or services previously charged to the  
27 dealer.

28 (b) Upon receipt of a notice given pursuant to or in satisfaction of subdivision (a)  
29 above, or in the event a new motor vehicle dealer discovers an actual or proposed  
30 charge or debit for which a manufacturer should have provided prior written notice  
31 under subdivision (a) above, the dealer, if he believes the charge to be unreasonable, or  
32 contrary to the provisions of this Article or the franchise, may challenge the charge  
33 either by filing a petition before the Commissioner as provided in G.S. 20-301(b) or, if  
34 the amount in controversy is less than or equal to ten thousand dollars (\$10,000), the  
35 dealer may, in his discretion, instead utilize the informal dispute resolution procedure  
36 provided in subsection (c) below.

37 (c) Any franchised new motor vehicle dealer who seeks to challenge an actual or  
38 proposed debit or charge to the dealer or to the dealer's account in amount less than or  
39 equal to ten thousand dollars (\$10,000) may, in lieu of filing a formal petition before the  
40 Commissioner as provided in G.S. 20-301(b), proceed as provided in this subsection.

41 (1) The dealer shall send a letter to the Commissioner by certified or  
42 registered mail, return receipt requested, identifying the actual or  
43 proposed charges the dealer seeks to challenge and the reason or basis  
44 for such challenge. Unless the dealer specifically states in the letter

1 that the dealer will be represented before the Commissioner by legal  
2 counsel, the matter shall be considered and heard by the Commissioner  
3 without the appearance of legal counsel by either the dealer or  
4 manufacturer. Upon the mailing of a letter to the Commissioner under  
5 this subsection, any chargeback to or any payment required of a dealer  
6 by a manufacturer shall be stayed during the pendency of the  
7 determination by the Commissioner.

8 (2) Upon the receipt of the dealer's letter, the Commissioner shall forward  
9 a copy of the dealer's letter to the affected manufacturer, by certified or  
10 registered mail, return receipt requested, along with a notice stating the  
11 date and time of a meeting to be held at the dealership at which time  
12 the parties shall informally provide evidence and arguments in support  
13 of their respective positions on the charges identified in the dealer's  
14 letter to the Commissioner.

15 (3) At least 10 days prior to the meeting, the affected manufacturer shall,  
16 by certified or registered mail, return receipt requested, send the dealer  
17 and Commissioner a detailed response to the allegations raised in the  
18 dealer's letter.

19 (4) The meeting at the dealership shall be conducted in an informal  
20 manner under the direction of the Commissioner and the meeting shall  
21 not be recorded or transcribed, nor shall any witnesses be sworn. The  
22 manufacturer shall have the burden of proving that the amount of any  
23 actual or proposed charge or debit challenged by the dealer is both  
24 reasonable and justifiable under the law. Neither the Rules of Civil  
25 Procedure nor the Rules of Evidence shall be applicable.

26 (5) If the parties fail to resolve their dispute at the meeting or within 10  
27 days thereafter, the Commissioner, by certified or registered mail, shall  
28 notify the parties of his determination within 30 days. The  
29 Commissioner shall state the factual and legal bases of his findings  
30 and, unless an appeal is taken by the manufacturer or dealer as  
31 provided in this subsection, it shall be unlawful for a manufacturer to  
32 require payment from a dealer or charge or debit the dealer's account  
33 for any contested charge or series of charges, if the Commissioner fails  
34 to determine that such charge or series of charges is both reasonable in  
35 amount and justifiable under the law.

36 (6) Within 30 days after receipt of the Commissioner's determination  
37 either the dealer or manufacturer may appeal the determination of the  
38 Commissioner and obtain a trial de novo, in the matter by filing a  
39 complaint in the General Court of Justice in the county in which the  
40 dealership is located. Upon the filing of such a complaint, the  
41 determination of the Commissioner shall immediately be stayed,  
42 provided, however, that the manufacturer shall not require payment  
43 from the dealer or debit or charge the dealer's account unless and until  
44 a final judgment supporting such payment or charge has been rendered

1 by the Court. Trial de novo shall take place in the General Court of  
2 Justice either with or without a jury as in the case of other civil  
3 actions; either or both parties may elect to be represented by legal  
4 counsel; the determination of the Commissioner shall not be presented  
5 to or considered by the Court; and the parties and Court shall comply  
6 with the Rules of Civil Procedure and Rules of Evidence. At the trial,  
7 the manufacturer shall have the burden of proving that the amount of  
8 any actual or proposed charge or debit challenged by the dealer is both  
9 reasonable in amount and justifiable under the law. Appeal from the  
10 final judgment of the Court may be taken by either party in the same  
11 manner and in accordance with the same procedure as in other civil  
12 actions."

13 **SECTION 3.** G.S. 20-305(30) reads as rewritten:

14 ~~"(30) To vary the price charged to any of its franchised new motor vehicle~~  
15 ~~dealers located in this State for new motor vehicles based on the~~  
16 ~~dealer's purchase of new facilities, supplies, tools, equipment, or other~~  
17 ~~merchandise from the manufacturer, the dealer's relocation,~~  
18 ~~remodeling, repair, or renovation of existing dealerships or~~  
19 ~~construction of a new facility or upon the dealer's participation in~~  
20 ~~training programs sponsored, endorsed, or recommended by the~~  
21 ~~manufacturer.~~

22 ~~The price of the vehicle, for purposes of this subdivision shall include~~  
23 ~~the manufacturer's use of rebates, credits, or other consideration which~~  
24 ~~has the effect of causing a variance in the price of new motor vehicles~~  
25 ~~offered to its franchised dealers located in the State.~~

26 ~~Notwithstanding the foregoing, nothing in this subdivision shall be~~  
27 ~~deemed to preclude a manufacturer from establishing sales contests or~~  
28 ~~promotions which provide or award dealers or consumers rebates or~~  
29 ~~incentives.~~

30 ~~Nothing contained in this subdivision shall prohibit a manufacturer~~  
31 ~~from providing assistance or encouragement to a franchised dealer to~~  
32 ~~remodel, renovate, recondition, or relocate the dealer's existing~~  
33 ~~facilities, provided that this assistance, encouragement, or rewards are~~  
34 ~~not determined on a per vehicle basis.~~

35 ~~In the event that at the time of the ratification of this act a~~  
36 ~~manufacturer is currently operating a program or has in effect a policy~~  
37 ~~which would violate this subdivision after October 1, 1999, it shall be~~  
38 ~~lawful for that program or policy, or a program or policy similar~~  
39 ~~thereto implemented after the effective date of this act, to continue in~~  
40 ~~effect as to the manufacturer's franchised dealers located in this State~~  
41 ~~until December 31, 2002. Any manufacturer shall be required to pay or~~  
42 ~~otherwise compensate any franchise dealer who has earned the right to~~  
43 ~~receive payment or other compensation under a program in accordance~~  
44 ~~with the manufacturer's program or policy.~~

1           (30) To offer to sell or lease or to sell or lease any new motor vehicle or  
2 accessory to any dealer at a lower actual price therefore than the actual  
3 price offered to any other dealer for the same model similarly equipped  
4 or accessory or to use any device, including, but not limited to, an  
5 incentive, sales promotion plan, or other similar program, which  
6 results in a lower actual price of a vehicle or accessory being offered to  
7 one dealer and which is not offered to other dealers of vehicles of the  
8 same line-make or the same accessory.

9           For purposes of this subdivision, the price of a vehicle shall include  
10 the manufacturer's use of manufacturer-to-dealer rebates, incentives,  
11 credits, or any other financial consideration which has the effect of  
12 causing any of the manufacturer's dealers located in this State to be  
13 required to pay more for any vehicle similarly equipped than any of  
14 that manufacturer's other dealers located in this State.

15           The practices, policies, and programs specifically prohibited under  
16 this subdivision include, but are not limited to, manufacturer-to-dealer  
17 rebates, incentives, credits, or any other financial consideration paid or  
18 awarded by manufacturers to new motor vehicle dealers on the basis  
19 of: a dealer's acquisition of a new facility or relocation or renovation of  
20 an existing facility; whether or not a dealer is dualed with one or more  
21 other line-makers of vehicles; a dealer's sales volume or penetration; a  
22 dealer's level of sales or service customer satisfaction; a dealer's  
23 purchase of advertising materials, signage, tools, equipment, computer  
24 hardware or software, communications devices, or furnishings; or a  
25 dealer's participation in training, used vehicle inspection or  
26 certification, or other programs sponsored or endorsed by the  
27 manufacturer.

28           It shall not be unlawful under this subdivision for a manufacturer to  
29 offer or provide manufacturer-to-dealer rebates, incentives, or other  
30 payments to its franchised dealers located in this State, as long as the  
31 same per vehicle dollar amount of any such rebate, incentive, or other  
32 payment is uniformly available to all of its franchised dealers located  
33 in this State without regard to the number of vehicles sold by the  
34 dealer or other requirements, conditions, limitations, or restrictions. It  
35 shall further not be unlawful for any manufacturer to offer or provide  
36 direct manufacturer-to-consumer rebates, incentives, or other  
37 payments to purchasers within this State, as long as the same dollar  
38 amount of such rebates, incentives, or other payments are available  
39 during any stated period of time to all purchasers of identified models  
40 or series of vehicles without condition, limitation, or other restriction.  
41 Nothing contained in this subdivision shall prohibit a manufacturer  
42 from providing assistance or encouragement to a franchised dealer to  
43 remodel, renovate, recondition, or relocate the dealer's existing

1 facilities, provided that this assistance, encouragement, or reward is  
2 not determined on a per vehicle basis.

3 It is unlawful for any manufacturer to charge or include the cost of  
4 any programs or policy prohibited under this subdivision in the selling  
5 price of vehicles which the manufacturer sells to its franchised dealers  
6 located in this State.

7 The provisions of this subdivision shall apply both to existing and  
8 future programs and policies of all manufacturers that distribute new  
9 motor vehicles to new motor vehicle dealers located in this State and  
10 shall apply irrespective of any contrary provision contained in any  
11 franchise agreement or novation; provided, however, that in the event  
12 that as of October 1, 1999, a manufacturer was operating a program or  
13 had in effect a policy which would violate this subdivision, it shall be  
14 lawful for that program or policy to continue in effect as to the  
15 manufacturer's franchised dealers located in this State until December  
16 31, 2002. Any manufacturer shall be required to pay or otherwise  
17 compensate any franchise dealer who has earned the right to receive  
18 payment or other compensation under a program in accordance with  
19 the manufacturer's program or policy."

20 **SECTION 4.** G.S. 20-305.2(b) reads as rewritten:

21 "(b) This section shall not apply to manufacturers or distributors of ~~trailers, motor~~  
22 ~~homes, trailers~~ or semitrailers."

23 **SECTION 5.** Chapter 20 of the General Statutes is amended by adding a  
24 new section to read:

25 "**§ 20-305.6. Unlawful for manufacturer or captive finance company to unfairly**  
26 **discriminate among dealers.**

27 (a) Notwithstanding the terms of any contract, franchise, novation, or agreement,  
28 it shall be unlawful for any manufacturer, factory branch, distributor, or distributor  
29 branch to:

30 (1) Offer or distribute goods or services to one or more of its franchised  
31 dealers located in this State at a lower price or on a more favorable  
32 basis than is available to any of its other franchised dealers located in  
33 this State;

34 (2) Treat its franchised dealers located in this State who have dualled  
35 facilities at which the vehicles distributed by such manufacturer are  
36 sold or serviced with one or more other line-makes of vehicles on a  
37 less favorable basis than it treats its dealers who exclusively sell  
38 vehicles distributed by such manufacturer; or

39 (3) Otherwise treat one or more of its franchised dealers located in this  
40 State on a more favorable basis than it treats any of its other franchised  
41 dealers located in this State.

42 (b) Notwithstanding the terms of any contract, franchise, novation, or agreement,  
43 it shall be unlawful for any leasing company, finance company, or other lender that is  
44 owned, operated, or controlled by a manufacturer, factory branch, distributor, or

1 distributor branch, to offer less favorable terms to or treat any of the dealers franchised  
2 by such manufacturer, factory branch, distributor, or distributor branch in this State with  
3 whom such leasing company, finance company, or other lender engages in business on a  
4 less favorable basis than it offers to or treats any of such manufacturer's other franchised  
5 dealers located in this State."

6 **SECTION 6.** G.S. 20-308.1 reads as rewritten:

7 **"§ 20-308.1. Civil actions for violations.**

8 (a) Notwithstanding the terms, provisions or conditions of any agreement or  
9 franchise or other terms or provisions of any novation, waiver or other written  
10 instrument, any person who is or may be injured by a violation of a provision of this  
11 Article, or any party to a franchise who is so injured in his business or property by a  
12 violation of a provision of this Article relating to that franchise, or an arrangement  
13 which, if consummated, would be in violation of this Article may, notwithstanding the  
14 initiation or pendency of, or failure to initiate an administrative proceeding before the  
15 Commissioner concerning the same parties or subject matter, bring an action for  
16 damages and equitable relief, including injunctive relief, in any court of competent  
17 jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or  
18 that seeks relief wholly outside the authority or jurisdiction of the Commissioner to  
19 award.

20 (b) ~~Where the violation of a provision of this Article can be shown to be~~  
21 ~~malicious or wanton, or if continued multiple violations of a provision or provisions of~~  
22 ~~this Article occur, the court may award punitive damages, attorneys' fees and costs in~~  
23 ~~addition to any other damages under this Article.~~

24 Any new motor vehicle dealer who has suffered pecuniary loss or who has been  
25 otherwise adversely affected because of a violation of a provision of this Article by a  
26 manufacturer, factory branch, distributor, or distributor branch, notwithstanding the  
27 existence of any other remedies under this Article, has a cause of action against such  
28 manufacturer, factory branch, distributor, or distributor branch licensee for damages and  
29 may recover damages therefore in any court of competent jurisdiction in an amount  
30 equal to treble the pecuniary loss, together with costs and reasonable attorneys' fees to  
31 be assessed by the court. Upon a prima facie showing by the new motor vehicle dealer  
32 bringing the action that such a violation by the manufacturer, factory branch, distributor,  
33 or distributor branch has occurred, the burden of proof shall then be upon the  
34 manufacturer, factory branch, distributor, or distributor branch to prove that such  
35 violation or unfair practice did not occur.

36 (c) A new motor vehicle dealer, if he has not suffered any loss of money or  
37 property, may obtain final equitable relief if it can be shown that the violation of a  
38 provision of this Article by a manufacturer or distributor may have the effect of causing  
39 such loss of money or property.

40 (d) Any association which is comprised of a minimum of 500 motor vehicle  
41 dealerships, substantially all of whom are new motor vehicle dealerships located within  
42 North Carolina, and which represents the collective interests of such members, shall  
43 have standing to file a petition before the Commissioner or a cause of action in the  
44 General Court of Justice of North Carolina for itself, or on behalf of any or all of its

1 members seeing a determination whether one or more manufacturers, factory branches,  
2 distributors, or distributor branches doing business in this State has violated any of the  
3 provisions of this Article, or for the determination of any rights created or defined by  
4 this Article, so long as the association alleges an injury to the collective interest of its  
5 members cognizable under this section. A cognizable injury to the collective interest of  
6 the members of such an association shall be deemed to occur if:

7 (1) A manufacturer, factory branch, distributor, or distributor branch doing  
8 business in this State has engaged in any conduct or taken any action  
9 which actually harms or affects, or threatens to harm or affect, all of  
10 the franchised new motor vehicle dealers holding franchises with that  
11 manufacturer, factory branch, distributor, or distributor branch in this  
12 State; or

13 (2) ~~Where there are continued violations of a provision or provisions of~~  
14 ~~this Article and it can be shown that the violations are willful or~~  
15 ~~wanton, the court, in addition to any other remedy or awards of~~  
16 ~~damages under this Article may assess monetary penalties. An action~~  
17 ~~is taken by the State of North Carolina which actually harms or affects,~~  
18 ~~or threatens to harm or affect, all new motor vehicle dealers within this~~  
19 ~~State."~~

20 **SECTION 7.** G.S. 20-305 is amended by adding a new subdivision to read:

21 "(38) Notwithstanding the terms, provisions, or conditions of any agreement  
22 or franchise or other terms or provisions of any novation, waiver, or  
23 other written instrument, to assign or change a new motor vehicle  
24 dealer's area of responsibility under the franchise arbitrarily or without  
25 due regard to the present or projected future pattern of motor vehicle  
26 sales and registrations within the dealer's market. A new motor vehicle  
27 dealer who believes that a manufacturer, factory branch, distributor, or  
28 distributor branch with whom the dealer has entered into a franchise  
29 has violated this subdivision may file a petition before the  
30 Commissioner as provided in G.S. 20-301(b) contesting the dealer's  
31 assigned area of responsibility. At the hearing before the  
32 Commissioner, the affected manufacturer, factory branch, distributor,  
33 or distributor branch shall have the burden of proving that all portions  
34 of its current or proposed area of responsibility for the petitioning  
35 dealer are reasonable in light of the present or projected future pattern  
36 of motor vehicle sales and registrations within the dealer's market."

37 **SECTION 8.** If any clause or provision contained in this act shall be  
38 determined to be unconstitutional or unenforceable, that unconstitutionality or  
39 unenforceability shall not affect the validity of all remaining clauses or provisions not  
40 specifically determined to be unconstitutional or unenforceable.

41 **SECTION 9.** This act is effective when it becomes law.